

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

PAULA FOOTE *individually and on behalf of others similarly situated,*

Plaintiff,

V.

CAR PROTECTION USA d/b/a Clear Path; JOHN DAVIS; and MATRIX WARRANTY SOLUTIONS, INC. d/b/a Element Protection,

Defendants.

Civil Action No.: 3:20-CV-1084-L

DEFENDANTS' MOTION TO DISMISS

Defendants Car Protection USA d/b/a Clear Path, John Davis, and Matrix Warranty Solutions, Inc. d/b/a Element Protection, by counsel, respectfully move this Court to dismiss Plaintiff Paula Foote's First Amended Complaint, ECF No. 11, pursuant to Fed. R. Civ. P. 12(h)(3) and N.D. Tex. L.R. 7.2.

The grounds for Defendants' Motion are set forth in their contemporaneously filed Brief in Support. In brief, Plaintiff's First Amended Complaint is a one-count complaint under the automated-call provisions of the Telephone Consumer Protection Act.¹ But on July 6, 2020, in *Barr v. American Association of Political Consultants, Inc.*, 140 S. Ct. 2335 (2020) (“AAPC”),² the Supreme Court held that the TCPA’s automated-calling prohibition—the very

¹ 47 U.S.C. § 227(b)(1)(A); First Am. Compl. p 15, ECF No. 11 (single Count for alleged “Violation of the TCPA’s Automated Calling provision”).

² Because the Supreme Court decided the constitutional challenge to the automated-call ban in *AAPC*, Federal Rule of Civil Procedure 5.1 does not apply to this filing and a notice of constitutional challenge is not required. *See Fed. R. Civ. P. 5.1*. If the Court determines otherwise, Defendants will promptly file such a notice.

statutory provision that Plaintiff's Complaint here is based upon—was an unconstitutional, content-based suppression on speech. It addressed the law's unconstitutional condition by prospectively severing the exemption that Congress had created for automated calls made for the purpose of collecting a federal debt. Thus, the TCPA's automated-call prohibition was unconstitutional from the enactment of the government-debt exemption in 2015 until the Supreme Court's severance became operative this year. Because Plaintiff's entire case rests on a law that was unconstitutional during the time at issue, this Court lacks subject matter jurisdiction over claims under a void law. Plaintiff's Complaint should therefore be dismissed for lack of jurisdiction.

Dated: November 16, 2020

Respectfully submitted,

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COUNSEL FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **MOTION TO DISMISS** has been served on this 16th day of November 2020 on all counsel of record via the Court's CM/ECF system.

/s/ Ryan A. Phipps
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